IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
S.B. Criminal Appeal No.144/2004

Shiv Lal S/o Amar Lal
...Accused-appellant
Versus
State of Rajasthan through P.P.
...Respondent

Date of Judgment ::: 16.4.2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Sanjay Kumar Sharma, Counsel for the accused-appellant
Shri Brahmanand Sandu, P.P., for the State
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By the Court:-

The accused-appellant Shiv Lal S/o. Amar Lal has challenged his order of conviction and sentence dated 20th December, 2003 passed by the Additional District and Sessions Judge (Fast Track) No.4, Jhalawar in Sessions Case No.163/2003 whereby he has been convicted and sentenced as under:-

Under Section 307 IPC:

Ten years rigorous imprisonment and a fine of Rs.1,000/-; in default of payment of fine, to

further undergo one year's rigorous imprisonment; and

Under Section 326 IPC:

Seven years rigorous imprisonment and a fine of Rs.500/-; in default of payment of fine, to further undergo six months rigorous imprisonment.

Both the sentences were ordered to run concurrently.

Briefly stated the facts of the case are Ex.P.1 Parcha Bayan of injured Shyamubai (PW-1) was recorded by PW-8 Ayub Khan on 16th August, 2003 wherein it was stated when she was married with Shiv Lal. Her husband used to take smack. They have one son and two daughters. On that day at about 6.30 AM, she was preparing tea; her husband came and demanded Rs.50/-, she refused and told him that she has no money. Thereafter, the accused poured a kerosene oil on her person and set her on fire and she sustained burn injuries.

On the basis of this Parcha Bayan Ex.P.1, police registered FIR No.96/2003 at Police Station, Dag, District Jhalawar under Section 307

IPC. After completion of investigation, challan was filed against appellant under Sections 307 and 326 IPC. The trial court framed the charge against the accused appellant for the above offence. The accused denied the charge and claimed trial. The prosecution examined 12 witnesses. Thereafter the statement of accused was recorded under Section 313 Cr.P.C. wherein he stated his innocence and his falsely implication in the case. The trial Court, after considering the prosecution evidence on record convicted and sentenced the accused appellant as mentioned above.

The only argument urged on behalf of learned counsel for the accused appellant is that as per the statement of PW-12 Dr. Bhupesh Dayal read with injury report Ex.7 of injured PW-1 and opinion of the doctor Ex.P-6., it is clear that the burn injuries were grievous in nature but they were not sufficient to cause death in the ordinary course of nature. It is stated that the investigating officer sought an opinion from the medical officer and PW-12 Dr. Bhupesh Dayal opined that in case the treatment would not have been given to the injured then the injuries sustained by her would have caused her death.

It is, therefore, contended that learned trial Court without considering the ingredients of Section 307 IPC, wrongly convicted and sentenced the accused-appellant and in these circumstances conviction of the appellant under Section 307 IPC is liable to be set aside.

So far as the conviction of the appellant under Section 326 IPC is concerned, learned counsel for the appellant contended that appellant is in Jail since 18th August, 2003, therefore, he has already remained in jail for about three years and eight months and further that injured was none else but wife of accused who has entered into a compromise in view of the fact that there is no one else to look after her family, therefore, learned counsel for the appellant contended that ends of justice will meet if sentence of imprisonment of accused under Section 326 IPC awarded by the trial Court is reduced to a period of imprisonment already undergone by him.

Learned Public Prosecutor has supported the impugned judgment passed by the trial court and contended that the statement of injured PW-1 Shyamubai is fully corroborated by the statements

of PW-2 Mangilal, PW-11 Kailashbai and the injury-report (Ex.P-7). He further contended that the learned trial court has rightly convicted the accused and there is no merit in this appeal and the same is liable to be rejected.

I have considered the submissions of learned counsel for both the parties and minutely scanned the impugned judgment as well as the record of the trial court.

Exhibit P-1 is the 'parcha bayan' of injured PW-1 Shyamubai, recorded by PW-8 Ayub Khan at the Police Station, Dug, wherein she stated that she was set at fire by pouring kerosene oil by accused Shivlal, her husband. Similar statement was given by PW-1 Shyamubai before the trial court. PW-2 Mangilal and PW-11 Kailashbai are the son and daughter of injured and accused, who were present at the time of incident; they corroborated the statement of PW-1 Shyamubai. Her statement is also corroborated by the statement of PW-3 Kanhaiyalal. PW-9 Bhanwar Singh, the Investigating Officer of the case, also supported the prosecution case. Injury-report (Exhibit P-7) shows that Shyamubai sustained 30% burns injury, which was proved by

PW-12 Dr. Bhupesh Dayal. The Investigating Officer sought an opinion vide letter dated 20.8.2003 from the Medical Officer PW-12, which was given by him on the said letter itself to the effect that the burns injuries were grievous in nature and, in case, the treatment would not have been given to the injured at the proper time, there was possibility of her death in the ordinary course of nature also. The treatment was given to injured at the proper time, therefore, she was saved.

The above discussion of the prosecution evidence makes it clear that the accused and injured are husband and wife. The accused demanded Rs.50/- from her wife and when she refused then he poured kerosene oil on her and set her on fire thereby she sustained 30% burns injuries, which were found grievous in nature; but, as per the opinion of Dr. Bhupesh Dayal, the same would have caused death in case she would not have been treated properly in time. His opinion does not specify that the injuries were sufficient to cause death in the ordinary course of nature. In these circumstances, I find that the ingredients of Section 307, IPC, are not fully present in the case and the learned trial court has

committed an illegality in convicting the accused-appellant under Section 307, IPC; however, the accused has rightly been convicted under Section 326, IPC.

The learned counsel for the appellant has referred the judgment of Single Bench of the Orissa High Court in **Kulamani Sahu & Another V/s. State of Orissa 1994 (2) CRI.L.J. 2245**, and contended that, in similar circumstances where accused threw acid on the person of injured, but, in view of the opinion of the medical expert that injuries were grievous but they were not sufficient to cause death in the ordinary course of nature, the conviction of accused recorded by the trial court under Section 307, IPC, was set aside and he was convicted under Section 326, IPC.

I have considered the above referred judgment of Orissa High Court, which was delivered by Hon'ble Mr. Justice Arijit Pasayat (as he then was). Para 10 and 11 of the said judgment are reproduced as under:-

> "10. Section 307 applies to attempt to murder, in which there has been not merely a commencement of an execution of the purpose, but something little short of a complete execution, the consummation being hindered by circumstances independent of the will of the author. The act or omission, although it does not

cause death, is carried to such a length as, at the time of carrying it to that length, the offender considers sufficient to cause death. It is sufficient if the act was one capable of causing death and there was an intention to cause death. A person commits an offence under section 307 when he has an intention to commit murder and in pursuance of that intention does an act towards its commission irrespective of the fact whether that act is the penultimate act or not. (See Om Prakash V. State of Punjab, AIR 1961 SC 1782): 1961 (2) Cri LJ 848. To convict under this section it is not necessary to show that bodily injury capable of causing death was inflicted. What the Court has to see is whether the Act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Attempt need not be penultimate act. It is sufficient if there is intent coupled with some overt act in execution thereof. (See State of Maharashtra V. Balaram Rama Patil, 1983 Cri LJ 331 (SC) : AIR 1983 SC 305). An attempt is an intentional preparatory action which fails in its objects, which so fails through circumstances independent of the person who seeks its accomplishment. An attempt is an intended, but unfinished, crime, tending, but failing, to effect its commission. This view was expressed in R.V. Kinneker, L.R. (1906) 2 KB 99. Specific intention to commit the crime of murder is a necessary pre-requisite of the section. To bring a case within the ambit of section 307, the prosecution has to make out facts and circumstances

envisaged by section 300, IPC. If the ingredients of Section 300 are wholly lacking, there can be no conviction under section 307. Unless it can be said that the intention or knowledge of the accused was to cause such bodily injury as would come within one of the four clauses of section 300, IPC, he cannot be held guilty of an offence under section 307, IPC.

11. From the facts of the case, I find that the doctor who had examined various injured persons has not given any finding that the act would have caused death, but for an interruption. Material in that regard is squarely absent. Therefore, the conviction under section 307, IPC cannot be maintained. However, the case is squarely covered under section 326, IPC. The section refers to causing of grievous hurt by means of corrosive substance. In that view of the matter, it is clear that the petitioners have committed an offence punishable under section 326, IPC. Considering the fact that the occurrence took place more than ten years back, I feel it would not be desirable to send the accused persons back to custody. The custodial sentence is restricted to the period already undergone. But considering the fact that they had caused injuries on vital parts of the body of the injured persons numbering nine, I feel that imposition of fine of Rs.2,000/- (two thousand) on each of the accused-petitioners would be appropriate. On recovery, in respect of each accused, Rs.200/- each has to be paid to P.Ws.1 to 9. In other words if the accused-

> petitioners pay the fine, each of the injured persons shall get Rs.600/-. In case the accused-petitioners do not pay the fine, default sentence shall be rigorous imprisonment for one year."
>
> Both the revision applications are disposed of accordingly."

I have already discussed the prosecution evidence, as detailed above, and, keeping that in view, came to a conclusion that in view of the statements of injured eye-witness and PW-12 Dr. Bhupesh Dayal, and the injury-report (Exhibit P-7) and the opinion (Exhibit P-6) of PW-12 Dr. Bhupesh Dayal, the accused has committed the offence under Section 326, IPC, but his conviction under Section 307, IPC, recorded by the trial court is liable to be set set-aside.

So far as sentence part under Section 326, IPC, is concerned, it is on the record that injured PW-1 Shyamubai has entered into a compromise during the pendency of this appeal. The original compromise, supported by her affidavit, duly attested by Notary, has been placed on the record, wherein she stated that her husband is in jail and she is facing great hardship as he was

the only male member to earn livelihood for her family; there is none else to look after her family.

After considering all the facts and circumstances of the case, I am of the view that ends of justice will meet in case sentence of imprisonment of the appellant awarded by the trial court under Section 326, IPC, is reduced to a period of 4 years rigorous imprisonment with a fine of Rs.500/-.

Consequently, the appeal is partly allowed. The conviction and sentence of the appellant passed by the trial court under Section 307, IPC, is set-aside, but, while confirming his conviction under Section 326, IPC, his sentence of imprisonment and fine under this Section is reduced to a period of 4 years rigorous imprisonment and a fine of Rs.500/-; in default of payment of fine, he has to further undergo 10 days additional rigorous imprisonment.

(Narendra Kumar Jain),J.

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